

Attorney Docket: 012237-0290736

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:

Confirmation Number: 3625

DAUGA et al.

Application No.: 10/069,402

Group Art Unit: 3714

Filed: December 9, 2002

Examiner: SAADAT, Cameron

Title: PROCESS AND DEVICE FOR COSMETIC TREATMENT, ESPECIALLY FOR CARE, FOR MAKEUP OR FOR DYEING

February 29, 2008

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
PURSUANT TO 37 C.F.R. § 1.181(a)**

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This petition is in response to the “Notice of Abandonment” (failure to take further action subsequently to the filing of the Notice of Appeal filed May 15, 2007) dated February 5, 2008, with respect to the above-identified patent application. Pursuant to the provisions of 37 C.F.R. §1.181(a) the applicants hereby request withdrawal of the holding of abandonment. The applicants submit that the application is **not** abandoned.

Enclosed (as APPENDIX A) is one copy each of the applicants’ “Amendment Under 37 C.F.R. §1.114” and a Request for Continued Examination (RCE), BOTH DATED July 6, 2007. As proof that the applicants’ amendment and RCE were properly filed with the USPTO, enclosed (as APPENDIX B) is a copy of a receipt stamped by the Office of Initial Patent Examination (OIPE) indicating a receipt date of July 6, 2007. Finally, a review of the

USPTO statement for the undersigned's firm's Deposit Account has indicated that the USPTO did properly charge the RCE fee to said Deposit Account (03-3975).

In view of the foregoing, the applicants submit that the present application is not abandoned. Therefore, the applicants request that the holding of abandonment be immediately withdrawn.

The applicants submit that although no fee is due for consideration of the present request in that the application is not abandoned and the petition has been presented under 37 C.F.R. §1.181(a), should the USPTO determine that a fee is due for presentation of this request, the USPTO is authorized to charge said fee to Deposit Account No. 03-3975, under Attorney Docket No. 012237-0290736.

Respectfully submitted,

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APPENDIX A

Request for Continued Examination (RCE) Transmittal Address to: Mail Stop RCE Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	10/069,402
	Filing Date	December 9, 2002
	First Named Inventor	CHRISTOPHE DAUGA
	Art Unit	3715
	Examiner Name	C. SAADAT
	Attorney Docket Number	012237-0290736

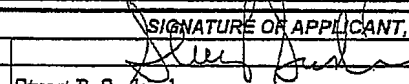
This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

- Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
 - ☐ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
 - ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
 - ☐ Other _____
 - ☒ Enclosed
 - ☒ Amendment/Reply
 - ☐ Affidavit(s)/ Declaration(s)
 - ☐ Information Disclosure Statement (IDS)
 - ☐ Other _____
- Miscellaneous**
 - ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)
 - ☐ Other _____
- Fees**

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed. The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to Deposit Account No. 033975. I have enclosed a duplicate copy of this sheet.

 - ☒ RCE fee required under 37 CFR 1.17(e) **\$790.00**
 - ☐ Extension of time fee (37 CFR 1.136 and 1.17)
 - ☐ Other _____
 - ☐ Check in the amount of \$ _____ enclosed
 - ☐ Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Signature		Date	July 6, 2007
Name (Print/Type)	Stuart P. Suskind	Registration No.	40192

CERTIFICATE OF MAILING OR TRANSMISSION			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.			
Signature			
Name (Print/Type)		Date	

This collection of information is required by 37 CFR 1.114. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Attorney Docket: 012237-0290736
Client Reference: CG B99/0066US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT APPLICATION of:

Confirmation Number: 3625

DAUGA ET AL.

Application No.: 10/069,402

Group Art Unit: 3715

Filed: December 9, 2002

Examiner: SAADAT, Cameron

Title: PROCESS AND DEVICE FOR COSMETIC TREATMENT, ESPECIALLY FOR
CARE, FOR MAKEUP OR FOR DYEING

July 6, 2007

AMENDMENT UNDER 37 C.F.R. § 1.114

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office Action, dated November 16, 2006, and the Advisory
Action, dated May 24, 2007, the time extended by a Notice of Appeal filed May 15, 2007 and
in conjunction with the filing of an RCE, Applicants respectfully amend the application as
follows:

IN THE CLAIMS:

This listing of claims will replace all prior versions, and listings, of claims in the application:

1. - 2. (Cancelled).
3. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, comprising steps of defining particular areas of said part and of applying ~~products~~ agents successively over said particular areas.
4. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, comprising a step of storing, for a given person, the ~~products~~ agents used and the local visual characteristics obtained.
5. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, in which the local characteristics obtained immediately after the application of the ~~products~~ agents are monitored.
6. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, in which the application of ~~products~~ agents is carried out by a head which follows a relief of said part.
7. (Previously Presented) The process as claimed in claim 6, in which the distance between the head and said part is monitored in real time.
8. (Currently Amended) The process as claimed in claim 7, in which the monitoring of the local characteristics obtained immediately after the application of the ~~products~~ agents is carried out using the head.
9. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, in which said part is reconstructed three-dimensionally in order to obtain a three-dimensional representation.

10. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, in which the treatment ~~products~~ agents are applied by airbrushing, by transfer printing, by tattooing or by a wipe impregnated with the ~~product~~ agents to be applied.

11. (Currently Amended) The process according to claim ~~1 or 2~~ 22 or 23, in which at least one digital image of said human body part to be treated is taken.

12. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, in which the image or images of said human body part to be treated is/are digitized.

13. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, in which the image taking and application steps are carried out in a first zone, and the analysis step is carried out in a second zone distinct from the first zone, with communication between said zones by means of a telecommunications network, of the Internet type.

14. (Currently Amended) The process as claimed in claim ~~1 or 2~~ 22 or 23, in which the image taking step is carried out in a first zone, the analysis step is carried out in a second zone distinct from the first zone, and the application step is carried out in a third zone distinct from the first and second zones, with communication between said zones by means of a telecommunications network, of the Internet type.

15. (Currently Amended) A device for implementing the process according to claim ~~1 or 2~~ 22 or 23, characterized in that it comprises a means of positioning said part, a means of taking images, a means of analyzing images in order to obtain the local characteristics of said part, and a means of applying makeup products over said part according to said local characteristics.

16. (Previously Presented) The device as claimed in claim 15, characterized in that the application means is supported by an arm which is articulated in order to be capable of following a relief of said part.

17. (Previously Presented) The device as claimed in claim 15, characterized in that the application means comprises at least one nozzle capable of spraying a treatment

product, said head being of the piezoelectric, pneumatic, electrospray, thermospray or aerosol type.

18. (Previously Presented) The device as claimed in claim 15, characterized in that it comprises means for controlling the position of the application means with respect to the part of the area to be treated.

19. (Previously Presented) The device as claimed in claim 15, characterized in that it comprises means for automatically controlling the total amount and the partial amounts of each product according to the local visual characteristics desired.

20. (Currently Amended) A computer program comprising program code means to implement the steps of the process according to claim 1 or 2 22 or 23, wherein said program runs on a computer.

21. (Cancelled).

22. (New) A non-remedial process for applying coloring agents to at least part of the human body, comprising steps of:

taking at least one image of said human body part to be treated,

analyzing local characteristics of said part from the image,

applying by mechanical means said coloring agents over said part of the human body according to said local characteristics, said mechanical means being controlled by at least one signal generated on the basis of the analysis of said local characteristics;

wherein said coloring agents are comprised of dyes or pigments selected to enhance the appearance of said body parts without permanent changes to the integrity of said body parts.

23. (New) A process for cosmetic treatment to at least part of the human body comprising steps of:

taking at least one image of said human body part to be treated,

analyzing local characteristics of said part from the image,

applying by mechanical means said coloring agents over said part of the human body according to said local characteristics, said mechanical means being controlled by at least one signal generated on the basis of the analysis of said local characteristics;

wherein said cosmetic treatment results in a non-therapeutic, temporary enhancement to the color, UV resistance, moisture content, gloss or texture of selected portions of the human body.

24. (New) The process according to claim 22 or 23, wherein said parts of the human body include hair, skin or nails.

25. (New) The process according to claim 22 or 23, wherein said coloring agents or cosmetic treatment comprises oils, inks, transfer prints, waxes, water, solvents, dyes, pigments, temporary self-tanning agents, thickeners, surfactants, fillers, film forming polymers and non film forming polymers.

26. (New) The process according to claim 22 or 23, wherein said coloring agent or cosmetic treatment is formulated as temporary make-up in the physical form of creams, pastes, waxes, lacquers, solutions, dyes, pigments, emulsions or powders.

REMARKS

This is in response to the Advisory Action, dated May 24, 2007. Claims 1-21 are under consideration; claims 1-21 stand rejected..

In the foregoing amended claims, independent claim 1 and dependent claims 2 and 21 are cancelled. Dependent claims 3-6, 8-15 and 20 are currently amended. Independent claims 22 and 23 are new; dependent claims 24-26 are new.

REJECTIONS UNDER 35 U.S.C. §§102(e) and 103(a)

In the Advisory Action, the Examiner has argued that the present invention does not distinguish over Syrowicz (Provisional 60/182,952) wherein the claimed laser cosmetic systems are associated with cosmetic products resulting in cosmetic improvement. The Examiner has presented a definition of "cosmetic" as relating to beauty, especially the complexion.

Applicants respectfully submit two new independent claims, 22 and 23, which further define the present invention and distinguish it over the prior art.

Thus, the Syrowicz invention claims a treatment directed toward an "undesired presence" such as moles, unwanted hair, pimples, etc. The methodology teaches harsh laser and chemical based removals. While these treatments and the resulting products may fall under the broad definition of "cosmetic," they are exclusively designed and intended to treat abnormal conditions of the skin and bring them to a generally normal condition. Syrowicz teaches a therapeutic system. The term "unwanted presence" is used repeatedly in the specifications and the procedures taught are used to remedy such abnormal "unwanted presence."

Independent claims 22 and 23 clearly distinguish over Syrowicz by limiting the system to cosmetic treatments which enhance normal skin. Thus, the newly claimed invention avoids remedial treatment of skin problems (unwanted presence) and is limited to those treatments of normal skin which add cosmetic appeal, e.g., color, which simply beautify.

The new claims are directed toward temporary changes in appearance through the application of, for example, creams, waxes and coloring agents – never to permanent removal of body parts - as in the prior art.

CONCLUSION

New independent claims 22 and 23 are limited to particular types of cosmetic treatment not taught or suggested in the prior art. Applicants respectfully seek allowance of these claims along with dependent claims which are similarly limited.

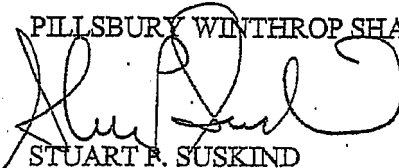
In summary, for the reasons set forth herein, Applicants maintain that claims 3-20 and 22-26 clearly and patentably define the invention, respectfully request that the Examiner reconsider the various grounds set forth in the Office Action, and respectfully request the allowance of the claims which are now pending.

If the Examiner would like to discuss any of the issues raised in the Office Action, Applicant's representative can be reached at (703) 770-7868.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP



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APPENDIX B

RECEIPT FROM PTO FOR INDICATED ITEMS

(Do NOT Use for New or Continuing Applications of Any Kind)
Use 2 postcards for all New Applications (including cont/Div/CIP)
Use this sheet when filing CPA or RCE

Appln. No: 10/069,402	Atty: Stuart P. Suskind/Mattingly
First Inventor: DAUGA	Date: July 6, 2007
Title: PROCESS AND DEVICE FOR COSMETIC TREATMENT	Attorney Docket No: 012237-0290736

ENCLOSED:

- ☒ RCE
☒ Response/Amendment

\$ Total Fee Charged to Deposit Account

CURRENT DUE DATE:

